



APPENDIX

***United States v. Schefold*, U. S. C. C. A. 2nd, October Term 1944. Argued April 12, 1945. Decided April 27, 1945.**

"The only issue on this appeal is the applicability of 18 U. S. C. A. § 80 to a false denial of Nazi Party membership upon an application for a certificate of identification as an alien enemy—a question we have just considered in *United States v. Heine*, 2 Cir., — F. 2d —, and *United States v. Barra*, 2 Cir., — F. 2d —, decided herewith. For the reasons there stated, we hold the statute applicable.

Affirmed."

***United States v. Heine*, U. S. C. C. A. 2nd, October Term 1944. Argued April 12, 1945. Decided April 27, 1945.**

"Defendant asserts however that 18 U. S. C. A. § 80 is not applicable because the Presidential Proclamation and the regulations pursuant thereto, particularly § 13(a), 28 C. F. R., Cum. Supp., 30.63(a) prescribe their own penalty for failure to comply with the regulations, namely, apprehension, detention and internment for the duration of the war. But that penalty is not specifically designed to cover falsification of an application. It covers the obvious omission to apply for or procure a certificate of identification. The purpose of the procedure requiring aliens to obtain certificates of identification and to answer the specific question on the application was to enable the authorities to ascertain in which cases apprehension, restraint and removal should be exercised in accordance with 50 U. S. C. A. § 21 so that they would not be compelled to intern all enemy aliens. Defendant's very purpose in lying about his Nazi Party membership was to escape probable internment. Punishment for such falsification should be something be-

yond that which would have attended a truthful response, and the statute here, as it has been uniformly construed, accomplishes that very purpose. It is applicable to any person who 'shall knowingly and wilfully * * * make * * * any false certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry in any matter within the jurisdiction of any department or agency of the United States', 18 U. S. C. A. § 80. Thus it prescribes an over-all penalty for falsification no matter what other penalties the statutes or regulations in connection with which the falsification occurs, may dictate. There can be no doubt that defendant's falsification comes within its purview. *U. S. v. Mayer*, 2nd Cir., 140 F. 2d 652; *U. S. v. Gilliland*, 312 U. S. 86."

United States v. Barra (same group of cases).

"But defendant also urges the inapplicability of the statute, though he gives a somewhat different turn to the argument than did Heine. Since we have already held the statute applicable, we shall dispose of the argument shortly, for it is fundamentally controlled by our decision as to Heine. Defendant says that since 50 U. S. C. A. 21, authorizing the President to restrain alien enemies, provides no penalty for failure or refusal of an alien to register, neither the President nor the Attorney General can make a crime out of a step in the application they required. But defendant is here accused not of violating the Presidential Proclamation or regulations thereunder, but of making a false certificate to a department of the United States and as we held expressly in *U. S. v. Meyer*, 2 Cir. 140 F. 2d 652, once it appears that the department 'has colorable authority to do what it is doing', an accused under this statute cannot justify his falsehood by a collateral attack on the authority. This follows from the decisions in *U. S. v. Knapp*, 302 U. S. 214; *Kay v. U. S.*, 302 U. S. 1; *Carter v. Texas*, 305 U. S. 557. Such authority is

clearly present here. 50 U. S. C. A. 21 not only gives the President power to restrain alien enemies in this country but confers upon him the further authority 'to establish any other regulations which are found necessary in the premises and for the public safety.' The Presidential Proclamation of January 14, 1942, 3 C. F. R. Cum. Supp. Proc. 2537, and the regulations which it authorized the Attorney General to make for acquiring of certificates of identification, 28 C. F. R. Cum. Supp. 30.51-30.63 are more than sufficient to make 18 U. S. C. A. § 80 applicable in the circumstances."